Supreme Court, U.S.
FILED
JUL 3 1991
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ORIGINAL

NO. 90-1887

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

STATE OF CONNECTICUT, Petitioner

v.

DAVID MOONEY, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF CONNECTICUT

BRIEF OF RESPONDENT IN OPPOSITION

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July 3, 1991

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EDITOR'S NOTE

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QUESTION PRESENTED

Does the respondent, under the Fourth Amendment to the United States Constitution, have a reasonable expectation of privacy in personal belongings in closed containers (including a duffel bag, a rolled-up sleeping bag, and a cardboard box), known by the police to belong to him and located in the area under a highway bridge abutment where he was living as a homeless person?

TABLE OF CONTENTS

	PAGE(S)
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
JURISDICTION	1
STATEMENT OF THE CASE	1
A. Relevant Facts and Proceedings	2
B. Summary of Connecticut Supreme Court's Decision	6
SUMMARY OF THE ARGUMENT	8
REASONS FOR DENYING THE WRIT	10
THE CONNECTICUT SUPREME COURT DID NOT EXPAND THE SCOPE OF FOURTH AMENDMENT PROTECTION IN ITS DECISION	10
A. Decision Below Was Fact-Specific and Grounded in Well-Established Fourth Amendment Law	10
B. Distinction Between Permanent and Temporary Relinquishment of Possessory Control For Privacy Protection Under Well-Established Fourth Amendment Principles	16

TABLE OF CONTENTS

PAGE(S)

C. When Respondent Placed Personal Effects Inside Closed Containers Hidden from Public View, He Relied on Traditional Constitutional Propositions that Such Conduct Manifested Reasonable Expectation of Privacy, and Police Intrusion into Such Containers Required Warrant 20

1. Open Fields Exception 20

2. Automobile Exception Cases 23

CONCLUSION 25

TABLE OF AUTHORITIES

CASES — PAGE(S)

Abel v. United States, 362 U.S. 217 (1960).....18, 19

Byars v. United States, 273 U.S. 28 (1927).....16

California v. Acevedo, ___ U.S. ___, 59 U.S.L.W. 4559 (decided May 30, 1991).....25, 26

California v. Carney, 471 U.S. 886 (1985).....25

California v. Ciraolo, 476 U.S. 207 Reh. Den., 478 U.S. 214 (1986).....24

California v. Greenwood, 486 U.S. 35 (1988).....18, 19

Carroll v. United States, 267 U.S. 132 (1925).....24

Chambers v. Maroney, 399 U.S. 42 (1970).....25

Ex Parte Jackson, 96 U.S. 727 (1878).....13

Florida v. Jimeno, ___ U.S. ____, 59 U.S.L.W. 4471 (decided May 23, 1991).....25, 26

Florida v. Wells, ___ U.S. ___, 110 S. Ct. 1632 (1990).....22

Hester v. United States, 265 U.S. 57 (1924).....18, 19

Katz v. United States, 389 U.S. 347 (1967).....17, 19, 20

Oklahoma v. Castleberry, 471 U.S. 146 (1985).....14, 15

Oliver v. United States, 466 U.S. 170 (1984).....22, 23, 24

Robbins v. California, 453 U.S. 420 (1981).....13

St. Paul v. Vaughn, 306 Minn. 337 (1975).....18

State v. Mooney, 218 Conn. 85 (1991).....12, 15, 19, 20, 22, 23, 24

United States v. Brignoni-Ponce, 422 U.S. 873 (1975).....25

United States v. Brown, 473 F.2d 952 (5th Cir. 1973).....18

TABLE OF AUTHORITIES

CASES PAGE(S)

United States v. DiRe, 332 U.S. 581 (1948).....16

United States v. Jacobsen, 466 U.S. 109 (1984).....12-13, 14, 15, 20

United States v. Place, 462 U.S. 696 (1983).....13, 15, 20, 26

United States v. Ramapuran, 632 F.2d 1149 (4th Cir. 1980).....18

United States v. Ross, 456 U.S. 798 (1982).....13, 25

United States v. Thomas, 864 F.2d 843 (D.C. Cir. 1989).....20

United States v. Van Leeuwen, 347 U.S. 249 (1980).....13, 20

United States v. Walker, 624 F.Supp. 99 (D.Md. 1985).....18

Rules

Supreme Court Rule 10.1. 27

Supreme Court Rule 14.1.1 (h).....2

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BRIEF OF RESPONDENT IN OPPOSITION

The respondent, David Mooney, respectfully requests the Court to deny the Petition for a Writ of Certiorari which seeks review of the opinion by the Connecticut Supreme Court. All parties to the proceeding are named in the caption of this case.

JURISDICTION

The respondent agrees with the jurisdictional statement set forth in its Petition. However, the respondent contests the jurisdiction of the Court on procedural grounds, namely, the failure of the Petitioner to comply with Rule 14.1.(h).

STATEMENT OF THE CASE

The respondent does not contest the allegations set forth in the petitioner's "Statement of the Case" except for its allegation that the respondent left his cardboard box and duffel bag "unattended near a highway bridge abutment" in New Haven, Connecticut. The respondent maintains that these items of personal property, which were closed containers, were left unattended only temporarily, and were in fact hidden from view under a bridge abutment at an entrance ramp to a portion of the Connecticut Thruway known as "Interstate 91" in New Haven.

A. Relevant Facts and Proceedings

The respondent does not contest the first two paragraphs set forth in petitioner's "Relevant Facts and Proceedings." However, the following corrections, additions and points of factual clarification should be considered:

Among the items which were missing from the victim's condominium were a VCR, a collection of rolled quarters, a metal box containing certain papers and documents, and his 1985 Chevrolet Celebrity automobile.

On August 5, 1987, members of the Branford and New Haven Police Departments observed Mark Allen operating the victim's automobile. After stopping and questioning him, the police arrested him for the murder of the victim, Theodore Genovese.

Mr. Allen, the petitioner's key prosecution witness at the trial, gave to the police four contradictory signed statements filled with untruths. None of the first three statements implicated the respondent in any manner whatsoever; it was only the fourth which inculpated the respondent. Mr. Allen admitted that he had taken the VCR as well as the coins and the car.

On the strength of the fourth of the signed statements obtained from Mr. Allen, the respondent was arrested on August 5, 1987, and, together with Mr. Allen, was charged with the murder of the victim. Bond was set at $500,000 and the respondent remained incarcerated from the time of his arrest through the proceedings at trial and upon the appeal.

While the respondent was incarcerated, a detective from the Branford Police Department contacted the respondent's girlfriend (Linda Spencer) and, at the request of this detective, Ms. Spencer agreed to lead him to the place where respondent had been living at the time of the murder. She directed the detective to a bridge abutment located underneath a highway overpass which constituted a portion of an entrance ramp leading to Interstate 91 in New Haven. The abutment was separated from the entrance ramp roadway by a steep embankment that was covered by heavy underbrush and crushed stone.

The detective climbed up the embankment and, using a high-powered flashlight in order to illuminate the area which was in complete darkness, observed several items, including a blanket used as a mattress, a rolled-up sleeping bag, a closed cardboard box, a suitcase, a closed duffel bag, and some clothing. The respondent made use of the metal and cement beams of the highway

support structure as "shelves" and placed all of his belongings on the beams with the exception of the duffel bag, the blanket, and several items of clothing, which were left on the ground.

Lacking either probable cause or a search warrant, the detective opened the duffel bag and found a paper bag containing a large quantity of coins totalling some $700 in value. The remaining items were seized by the police and taken to police headquarters where the items were opened and searched, again without benefit of probable cause or warrant. The cardboard box contained a size 38 belt, which corresponded with the waist size of the victim, but not that of the respondent. The duffel bag contained the coins above described as well as a pair of white pants that were stained with what was later determined to be blood, as well as several pieces of jewelry.

Contrary to the allegations set forth in petitioner's Petition for Certiorari to the effect that the items which were removed at the Branford Police Department were "inventoried," there is absolutely no evidence in the record of any inventory search having taken place. The state made no claim, either at trial or before the Connecticut Supreme Court, that the actions of the police came within the inventory exception to the warrant

requirement. The petitioner specifically disclaimed any such reliance in the course of its oral argument before the Connecticut Supreme Court because there was no evidence that the defendant's purported inventory of the items seized was pursuant to any policy or practice governing inventory searches.

The respondent testified at the suppression hearing that he had been living underneath the bridge abutment for approximately one month prior to his arrest. He was still living there at the time that he was arrested, and he had no other home. He was the only person occupying this particular space and, while he would leave the area every day temporarily, he would secure his belongings so that they were not only closed in various containers but could not be observed from the roadway below because he was concerned about possible theft. Each night, he slept behind a bush at this site with his belongings.

The respondent asserted ownership of all of the items taken by the police with the exception of the belt which he claimed to have acquired when it had been left on a park bench. The trial court found that the respondent had manifested a subjective expectation of privacy in the items seized, but, because these items were located on state property, his expectation was not "reasonable."

At the core of the trial court's determination at the suppression hearing was the court's conclusion that it was reasonable to assume that if one were to view the property where it was found, it would be a reasonable assumption that the property had been "abandoned" and that therefore the defendant did not meet the requirements of privacy expectations under Fourth Amendment law. It further concluded that the respondent had no reasonable expectation of privacy in this location which the court characterized as an "open area."

At trial, the items found in the closed containers by the police were presented in the petitioner's case-in-chief as inculpatory evidence and as a basis for connecting the respondent to the robbery and murder of Mr. Genovese.

B. Summary of the Connecticut Supreme Court's Decision

The respondent does not take issue with the summary of the majority opinion by the Connecticut Supreme Court as set forth in petitioner's "Statement of the Case."

A fuller exposition of the opinion by the Connecticut Supreme Court is required in order to assess the merits of the Petition for Writ of Certiorari. The state court repeatedly stressed the

particular facts and circumstances before it, including, inter alia, the facts that the closed containers found by the police were located in a secluded place that they knew the respondent regarded as his home; that the respondent's absence from that place at the time of the search was due to his arrest and custody by the police; that the purpose of the search was to obtain evidence of crimes for which respondent was then in custody; and finally, that the respondent had a reasonable expectation of privacy in the containers which was violated by the warrantless search on the part of the police. Under these circumstances, the State Supreme Court concluded that the evidence which was obtained as a direct result of that search should have been suppressed.

In addition to stressing its close adherence to decisions by the United States Supreme Court that, other than in automobile cases, there has been great deference accorded to the expectation of privacy in luggage and closed containers, the Connecticut Supreme Court rejected the petitioner's argument that the facts before it were consistent with "abandonment" or with the rationale underlying the "open fields" cases.

The Connecticut Supreme Court was persuaded that it was applying "first principles" of Fourth Amendment law to the facts

before it, and articulated its opinion in those terms. These "first principles" dictated its conclusion that the respondent retained a reasonable expectation of privacy in the interiors of the closed containers in which his personal belongings were located, so that the police were required to obtain a warrant in order to search the contents of those containers.

SUMMARY OF THE ARGUMENT

1. The Connecticut Supreme Court did not expand the scope of Fourth Amendment protection in the decision below, which was fact-specific and grounded in well-established Fourth Amendment law.

2. The distinction between permanent and temporary relinquishment of possessory control furthers the interest of the protection of privacy under well-established Fourth Amendment principles. The respondent's contention that there is no difference between permanent and temporary relinquishment of the control of personal property blurs a significant line of demarcation in both Fourth Amendment law and the law of property, and is not borne out by the cases.

3. When someone, such as the respondent, places his personal belongings inside luggage or other equivalent closed containers, such a person relies on the traditional constitutional propositions that such conduct manifests a reasonable expectation of privacy and that police intrusion into such containers ordinarily requires a warrant.

4. The facts in this case are totally at odds with petitioner's contention that this case should be decided under the "open fields" exception to the warrant requirement. The "open fields" cases cited by the petitioner are completely inapposite.

5. The closed container cases involving the use of automobiles or other readily moveable vessels have no application to the instant case. The warrantless searches of such containers in automobiles, when upheld, have generally been grounded upon their presence within the automobile and the general proposition repeatedly adopted by this Court to the effect that the privacy interest in such containers must yield to the broad scope of an automobile search.

REASONS FOR DENYING THE WRIT

THE CONNECTICUT SUPREME COURT DID NOT EXPAND THE SCOPE OF FOURTH AMENDMENT PROTECTION IN ITS DECISION

A. Decision Below Was Fact-Specific and Grounded in Well-Established Fourth Amendment Law

The respondent does not agree that the issue presented is "novel." Nor does he agree that this case "raises an issue not previously decided by this Court." (Petition for Writ of Certiorari, hereinafter "Cert. Pet." at 9).

The Connecticut Supreme Court's decision is fact-bound. It is highly fact-specific. If it is "novel," it is so only in the sense that the claimed privacy expectation in the closed containers at issue was asserted by a homeless person. The fact or status of homelessness per se did not affect the ratio decidendi in any significant way. To the contrary, the opinion below embarks upon its legal analysis in the following terms:

> We need not decide in this case whether the defendant had a reasonable expectation of privacy in the bridge abutment area. We assume for purposes of this decision that the state is correct that

> the defendant's broad claim of Fourth Amendment protection in the area involved must fail. (emphasis added)

State v. Mooney, 218 Conn. 85, 94 (1991).[1]

The state court opinion was grounded on the respondent's "more narrow claim -- that he had a reasonable expectation of privacy in his closed duffel bag and cardboard box . . ." located under the bridge abutment. Id. The state court's narrowly-based opinion is hardly consistent with petitioner's characterization of it as an "expansion" of the scope of Fourth Amendment protection by engaging in "an overtly innovative application" of its principles. (Cert. Pet., 9).

It is settled Fourth Amendment law that every person has a clear interest in the privacy of the contents of his/her luggage, handbag, or any other container that conceals personal

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1. Similarly: "We do not decide, moreover, whether the fourth amendment protects the goods and effects of all homeless persons, regardless of their particular circumstances. Those claims will have to await their assertion in light of their own factual contexts." State v. Mooney, 218 Conn. at 100. If certiorari is granted, nevertheless, respondent will urge this Court to reach the issue not decided by the Connecticut Supreme Court -- the scope of Fourth Amendment protection accorded to the homeless.

property and "papers and effects"[2] from public scrutiny. That privacy interest has been recognized by this Court's decisions spanning more than a century of its jurisprudence. See Ex Parte Jackson, 96 U.S. 727, 733 (1878), (sealed mail packages cannot be opened without warrant), reaffirmed in United States v. Van Leeuwen, 347 U.S. 249, 251 (1980) (U.S. mail case).

The same principle has also been recognized in three leading Fourth Amendment cases decided subsequent to Van Leeuwen. In United States v. Place, 462 U.S. 696 (1983), the holding was that even where the law enforcement authorities had reasonable suspicion justifying the temporary detention of an airline passenger's luggage, the seizure itself was unreasonable by reason of the extensive delay in ascertaining probable cause. In the following year, in United States v. Jacobsen, 466 U.S.

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2. This Court has explicitly rejected a constitutional distinction between "worthy" and "unworthy" containers (other than those which are transparent or otherwise clearly reveal their contents) because "the central purpose of the Fourth Amendment forecloses such a distinction." United States v. Ross, 456 U.S. 798, 822 (1982). "Once placed within a [closed, opaque] container, a diary and a dishpan are equally protected by the Fourth Amendment," and ". . . no court, no constable, no citizen, can sensibly be asked to distinguilsh the relative 'privacy interests' in a closed suitcase, briefcase, portfolio, duffel bag, or box." Robbins v. California, 453 U.S. 420, 426-27 (1981). Thus, the Connecticut Supreme Court proceeded down a well-worn path of Fourth Amendment law.

I09 (1984), the Court reaffirmed the principle that warrantless searches of a person's "effects" in closed containers "are presumptively unreasonable," and that "[e]ven when government agents may lawfully seize such a package to prevent loss or destruction of suspected contraband, the Fourth Amendment requires that they obtain a warrant before examining the contents of such a package." Id., at 114. In Oklahoma v. Castleberry, 471 U.S. 146 (1985), which came down soon after Jacobsen, an evenly-divided court affirmed the trial court's suppression of narcotics seized as a result of a warrantless seizure and search of suitcases in the trunk of the defendant's automobile, even though it was a search incident to an arrest, based on the fact that the police had probable cause to believe that the suitcases in the trunk contained illegal drugs.

In this case, the Connecticut Supreme Court applied well-settled Fourth Amendment principles in concluding as it did that it is the contents or interior of luggage or closed containers to which the reasonable expectation of privacy attaches. "A container which can support a reasonable expectation of privacy may not be searched, even on probable cause, without a warrant." United States v. Jacobsen, 466 U.S. 109, 120 n.17 (1984) (emphasis added) (package entrusted to possession of private

carrier). In the case at bar, there was neither a claim by the petitioner nor a finding by the trial court that the police had probable cause to seize, let alone search, the petitioner's duffel bag and closed cardboard box. State v. Mooney, 218 Conn. at 100 n.11.

All the containers in Place, Jacobsen and Castleberry -- an airline passenger's luggage, a package in the hands of a private freight carrier, and suitcases in the trunk of an automobile -- were of demonstrable mobility. Yet, in each instance, this Court insisted that, absent a warrant, the only proper course for the police was, at most, to seize but not to search the closed containers. That principle, when applied to the circumstances of the case at bar, requires suppression a fortiori. Here, the closed containers were found by the police in a secluded place that they knew the respondent considered to be his home; the respondent's absence from this location at the time of the search was due to his arrest and custody by the police; there was no probable cause; and the sole purpose of the search was to obtain evidence of the crimes for which he was in custody.

In urging upon this Court the ostensible uniqueness of the circumstances surrounding the seizure and search of the

respondent's closed containers, the petitioner stresses the facts that (1) they were "left unattended in a public area" and (2) this was an area "in which the defendant had no legally cognizable interest." (Cert. Pet. at 10). Both are bootstrap arguments.[3] As to the first point, the containers were left "unattended" because the police had arrested the respondent and he was incarcerated at the time of the search. These same personal belongings would have been equally "unattended" had they been found in a defendant's private mansion when he had been similarly arrested. As for respondent's alleged lack of a "legally cognizable interest" in the area of the bridge abutment, quaere as to whether Mr. Place had a "legally cognizable interest" in the airport or airline? Or Mr. Jacobsen in the freight carrier? Or Mr. Patterson in the U.S. Mail?

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3. The law is clear beyond cavil that bootstrap or after-the-fact justification for a search which was not lawful when it commenced will not cure the illegality of the search. United States v. DiRe, 332 U.S. 581, 595 (1948); Byars v. United States, 273 U.S. 28, 29-30 (1927).

B. Distinction Between Permanent and Temporary Relinquishment of Possessory Control Furthers Privacy Protection Under Well-Established Fourth Amendment Principles

A central proposition of petitioner's Certiorari Petition is that the Connecticut Supreme Court drew a distinction, for Fourth Amendment purposes, between permanent and temporary relinquishment of possession or control of personal property. (Cert. Pet., 12-13). This dichotomy, according to the petitioner, "does not further the primary concern of the Fourth Amendment to protect privacy . . ." (Id. at 13)

Petitioner's attempt at a syllogistic construct is flawed. Its major premise is that "abandoned" property is not entitled to Fourth Amendment protection since the owner of such property lacks a reasonable expectation of privacy in such property under the seminal decision by this Court in Katz v. United States, 389 U.S. 347, 353, 361 (1967). Its minor premise is that any relinquishment of possessory control, no matter how temporary, is "abandonment" as a matter of law, and that Mr. Mooney necessarily "abandoned" his duffel bag, sleeping bag and cardboard box

when he temporarily left his abode under the bridge and went "downtown." This syllogistic construct, however, ignores both settled law and the facts found in this case.

To support its claim that the defendant "abandoned" all of his personal belongings, including some $700 in coins, the petitioner argues that this case comes squarely within this Court's line of abandonment cases, particularly California v. Greenwood, 486 U.S. 35 (1988) (garbage bags left unattended outside the curtilage of defendant's home). Petitioner also relies on Hester v. United States, 265 U.S. 57, 58 (1924) (alcohol jug dropped by defendant with police in hot pursuit), and Abel v. United States, 362 U.S. 217 (1960) (contents of wastebasket of hotel room vacated by defendant), as authority in support of its abandonment theory.[4] (Cert. Pet., 12)

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4. Interestingly, several of petitioner's cases included in its string citation supporting its "open fields" argument are of the same genre as Hester and Abel: United States v. Ramapuran, 632 F.2d 1149 (4th Cir. 1980) (dynamite sticks in trunk of junked automobile); United States v. Brown, 473 F.2d 952 (5th Cir. 1973) (suitcase buried under chicken coop on abandoned farm); United States v. Walker, 624 F. Supp. 99 (D. Md. 1985) ("drop bag" left at roadside); St. Paul v. Vaughn, 306 Minn. 337 (1975) (eyeglasses case).

Unlike the cases cited by petitioner, however, there is not a scintilla of evidence in the record of this case that the respondent intended to relinquish his expectation of privacy in the contents of the closed containers in which his personal belongings were found. To the contrary, the state court concluded:

> Indeed, the defendant in this case intended to shield those contents from the gaze of others when he left them in the bridge abutment area during the day, and, of course, no contrary intent can be inferred from the fact that the police arrested him and thus prevented him from returning to his goods and effects that night.

State v. Mooney, 218 Conn. at 109.

The state court's fact-specific inquiry and conclusion here demonstrate that there was not a shred of evidence to show a temporary, let alone permanent, relinquishment of possession or control of the respondent's duffel bag and cardboard box. The carefully-packed and closed containers in this case are juridically one hundred eighty degrees removed from property that was trashed, as in Greenwood and Abel, or intentionally abandoned while in flight from law enforcement, as in Hester and its progeny. It has never been the law, in order for the Katz privacy requirements to be met, "that a person assertively

clutch an object in order to retain the protection of the Fourth Amendment." United States v. Thomas, 864 F.2d 843, 846 (D.C. Cir. 1989).

The Connecticut court correctly analyzed the facts before it by returning to "first principles" (e.g., Katz, Van Leeuwen, Place and Jacobsen) to resolve the question of "whether the defendant had a reasonable expectation of privacy in his duffel bag and cardboard box at the time of the search," noting that "[t]hat is necessarily a fact specific inquiry." State v. Mooney, 218 Conn. at 110. Having done that, the court concluded that when settled law was applied to the facts in this case, the respondent had not abandoned his property. Thus, it is not the Connecticut Supreme Court which seeks to expand the outer parameters of the Fourth Amendment's "first principles." Rather, it is the petitioner which seeks to blur the bright line between permanent and temporary relinquishment[5] of control over one's "effects."

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5. ". . .[S]uch a distinction between permanent and temporary relinquishment of possession or control does not further the primary concern of the Fourth Amendment to protect privacy and not proprietary interests." Cert. Pet. at 13.

C. When Respondent Placed Personal Effects Inside Closed Containers Hidden from Public View, He Relied on Traditional Constitutional Propositions That Such Conduct Manifested Reasonable Expectation of Privacy, and Police Intrusion into Such Containers Required Warrant

1. Open Fields Exception

The petitioner argues, in close linkage with its abandonment theory, that respondent had no reasonable expectation of privacy in his luggage by reason of having left it in a place accessible to the public. It is petitioner's contention that the police were not only entitled to seize these containers but to search them as well, without the benefit of a warrant. (Petitioner has never claimed that there were exigent circumstances present here -- the luggage could easily have been secured,[6] and, with the defendant incarcerated, there was more than ample time to obtain a search warrant.)

6. There is a hint, probably unintended, in the Petition that some kind of inventory search may have occurred here. In its statement of the "Relevant Facts," the petitioner states that the police removed respondent's closed containers to the Branford Police Station where they were "inventoried." Cert. Pet., 5. It also cites the recent decision,

Clearly, the petitioner is relying upon the "open fields" exception to the warrant requirement of the Fourth Amendment. Citing Oliver v. United States, 466 U.S. 170 (1984), it notes the fact that this Court has rejected privacy claims in items observed by police in open areas.

The facts do not bear out petitioner's assumption that respondent's belongings were open to public view, in effect located in "open fields." Unlike the fact patterns which give rise to the abandonment exception, a doctrine with which the "open fields" cases are so closely interrelated,[7] the respondent in the instant case abandoned nothing (supra, pp. 19-20). He took great pains to make his closed containers as inaccessible to, and as removed from, public view as possible.

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id. at 10, of Florida v. Wells, ____ U.S. ____, 110 S. Ct. 1632 (1990). It should be noted that petitioner made no claim, either at trial or on the appeal, that the actions of the police came within the inventory exception to the warrant requirement. Indeed, the petitioner specifically waived and rejected any such reliance at oral argument before the state supreme court because the trial record does not support any Branford Police Department policy or practice governing inventory searches designed to produce an inventory. See State v. Mooney, at 90-91 n.6.

7. This "confluence" is recognized at the very outset of the state's Petition, which it concedes to be grounded upon "the fact-based question of abandonment of privacy interests." Cert. Pet. at 9.

But for the fact that the police were led by the girlfriend of the respondent to the area where the respondent was living, it is highly doubtful that the police would ever have located it. The police had to traverse a steep embankment overgrown with underbrush in order to get to where the respondent had been living. His living area was not visible from the I-91 Connector below. Respondent had secured his property so as to add to its invisibility and inaccessibility by "using the metal and cement beams of the highway support structure as shelves" and placing "all of his belongings on the beams, with the exception of the duffel bag . . ." which was left on the ground. State v. Mooney, 218 Conn. at 90.

The facts here are far removed from any of the open fields cases. In Oliver v. United States, 466 U.S. 170 (1984), the main "public view" case relied on by petitioner, this Court was confronted by a fact-pattern wherein marihuana was growing openly in a field. It was not a case involving police search of closed containers. While concluding that "open fields [are not] 'effects' within the meaning of the Fourth Amendment," id. at 176, the Court made clear that even one who enters an open field retains his Fourth Amendment protection against unreasonable searches and seizures of his goods and effects. Id., 179 n.10.

The Oliver decision, as well as California v. Ciraolo, 476 U.S. 207, reh. den., 478 U.S. 214 (1986) (no reasonable expectation of privacy in backyard observable from the sky), are clearly inapposite.

The instant case is a closed container case.[8] It is not an open fields case. While the open fields in Oliver are not "effects" for Fourth Amendment purposes, a person's luggage clearly is, even under Oliver.

2. Automobile Exception Cases

For more than sixty-five years, this Court has recognized an automobile exception to the warrant requirements of the Fourth Amendment. Carroll v. United States, 267 U.S. 132, 153 (1925). Thus, early on, a distinction was drawn between the

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8. The petitioner also attempts to augment its Petition by inaccurately contending that the state court extended Fourth Amendment protection to respondent "because of the singular fact that he was homeless." (Cert. Pet. at 13) In fact, the Connecticut Supreme Court agreed with petitioner's contention that respondent did not have a reasonable expectation of privacy in the area under the bridge where he was living as a homeless person. What the court did say was that respondent's homelessness was "but one factor among several" bearing upon the "principal" issues in the case, namely "the nature of the containers searched and the circumstances surrounding their search." State v. Mooney, 218 Conn. at 99.

need for a warrant to search for contraband concealed in a "dwelling house or similar place" and the need for a warrant to search for contraband concealed in a readily movable vessel (such as an automobile, ship, boat or wagon). Id., 151, 153. The automobile exception has been expanded in the decades succeeding Carroll, particularly during the past two decades as the "war on drugs" has escalated. (See, e.g., Chambers v. Maroney, 399 U.S. 42 (1970); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); United States v. Ross, 456 U.S. 798 (1982); California v. Carney, 471 U.S. 886 (1985); and, most recently, Florida v. Jimeno, ____ U.S. ____, 59 U.S.L.W. 4471 (decided May 23, 1991) and California v. Acevedo, ____ U.S. ____, 59 U.S.L.W. 4559 (decided May 30, 1991).

The automobile cases, some of which are cited in petitioner's legal argument, are clearly of no relevance here. As the Court emphasized in Ross, the only reason for sustaining the validity of a search of closed containers without a warrant was because of their presence within the automobile. As this Court pointed out in Acevedo, "the privacy interest in those closed containers yielded to the broad scope of an automobile search." ____ U.S. ____, 59 U.S.L.W. at 4561.

It may be that petitioner will seek to draw comfort from this Court's recent decisions in Jimeno and Acevedo. If so, these cases provide cold comfort indeed. In the first place, both are automobile-search cases. Second, Jimeno was a consent-to-search case, inapposite here. Florida v. Jimeno, 59 U.S.L.W. at 4472. Third, in Acevedo, unlike the instant case, all courts agreed that the police had probable cause to believe that the brown paper bag in the car trunk contained marihuana. California v. Acevedo, 59 U.S.L.W. at 4561-62. Fourth, Acevedo distinguishes non-automobile cases such as United States v. Place, (supra at 13), stressing the fact that "no automobile [was] involved" and that "Place had nothing to do with the automobile exception and is inapposite." Id. at 4563. Thus, neither Jimeno nor Acevedo add any illumination whatever to the certiorari issue before this Court. Their relevance to the instant case begins and ends with the fact that both have fact-patterns involving closed containers.

CONCLUSION

For over sixty-five years, this Court has adhered to the principle that, as a matter of judicial discretion, a review on writ of certiorari will be granted only when there are "special

and important reasons therefor." Sup. Ct. R. 35 (5), Revised Rules of the Supreme Court of the United States, adopted June 8, 1925, eff. July 1, 1925, now Sup. Ct. R. 10 (.1.) The petitioner has failed to demonstrate in its brief that there are any such "special and important reasons" for granting the writ which it seeks.

Respectfully submitted,

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